

E-132, 299/SA-91-443 ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS AND REQUIRING COOPERATION IN DESIGN AND CONSTRUCTION OF FACILITIES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson  
Cynthia A. Kitlinski  
Dee Knaak  
Norma McKanna  
Patrice M. Vick

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition by  
the City of Rochester to Provide  
Interim Service to South Park  
Second Subdivision

ISSUE DATE: September 9, 1991

DOCKET NO. E-132, 299/SA-91-443

ORDER DENYING PETITION FOR  
INTERIM SERVICE RIGHTS AND  
REQUIRING COOPERATION IN DESIGN  
AND CONSTRUCTION OF FACILITIES

**PROCEDURAL HISTORY**

**I. FILINGS TO DATE**

On June 13, 1991 the City of Rochester filed a petition for interim authority under Minn. Stat. § 216B.44 (1990) to provide electric service to a recently annexed area wholly within the assigned service area of People's Cooperative Power Association (People's or the co-op). A new residential subdivision, South Park Second Subdivision, was slated for construction in the area. In the alternative, Rochester asked the Commission to allow the City to design and construct the distribution system to serve the subdivision and to require People's to use that system while compensation was being determined.

On July 11, 1991 People's filed a response opposing the City's interim service request and its request that it be allowed to design and construct the South Park Second distribution system.

On July 26, 1991 the Department of Public Service (the Department) filed comments recommending denial of the City's petition. The same day, the City filed additional comments.

The matter came before the Commission on August 8, 1991.

## FINDINGS AND CONCLUSIONS

### **II. THE LEGAL STANDARD**

Under Minn. Stat. § 216B.44 (1990), a municipal utility may acquire the right to serve any area within its city limits upon payment of appropriate compensation.<sup>1</sup> The statute also provides that the Commission may allow the municipal utility to serve new customers in the area at issue if the Commission finds that new service extensions by the assigned utility would not be in the public interest. Otherwise, the assigned utility is to continue serving old and new customers until compensation has been determined and paid.

### **III. THE CITY'S CLAIMS**

The City of Rochester requested interim service authority based on the following claims:

1. Integration Costs -- The City claimed allowing People's to serve the subdivision would not be in the public interest because the City eventually will acquire the right to serve and will then be faced with integration expenses which could and should have been avoided.
2. Need for Additional Capacity/Increase in Wholesale Demand Charge -- The City stated it feared People's' system was at or near capacity and that expensive improvements would be necessary for the co-op to serve the subdivision. Similarly, the City feared adding the subdivision to People's' load would eventually cause an increase in its wholesale demand charge.
3. Non-Standard Materials -- The City said it would be inefficient, once it acquired permanent service rights, to maintain a system containing both co-op and standard City materials.
4. The Co-op's Use of Outside Labor -- The City claimed it

---

<sup>1</sup> Under the statute, a municipal utility may serve without paying compensation if the area at issue is not receiving service from the assigned utility. The Commission has interpreted the phrase "receiving service" to include situations in which the assigned utility has facilities in place capable of providing service. The area at issue is receiving service within the meaning of the statute, since the co-op has facilities bordering the area capable of serving it.

could extend service at lower cost than the co-op, largely because it had full time electric construction personnel on staff and the co-op did not.

5. Energy Efficiency -- The City claimed that, since it transmits at a higher voltage than People's, its line losses are lower, and it should be granted interim service as the more energy-efficient utility.
5. The City's Commitment to Serve -- The City stated it was firmly committed to acquiring permanent service rights throughout the city and that efficiency therefore favored allowing the City to serve.
6. People's Failure to Cooperate -- The City said People's had failed to comply with the cooperation requirements of the last three interim service Orders, raising questions about the Commission's reliance on assurances of cooperation in awarding interim service.

As an alternative to interim service rights, the City asked the Commission to allow Rochester to design and construct a distribution system to serve the subdivision, and to require People's to use that system while compensation was being determined.

#### **IV. COMMISSION ACTION**

The Commission has examined the City's claims individually and as a whole and concludes they do not support a finding that interim service by the co-op would contravene the public interest. The co-op should therefore continue providing service to the area, including new points of delivery, while compensation is being determined. Minn. Stat. § 216B.44 (1990). The City's claims are examined individually below.

##### **A. Integration Costs**

The City claimed the Commission should grant it interim service rights so that, when it acquired permanent service rights, it would not have to incur substantial costs to integrate the subdivision into its system. The Commission finds that the integration costs alleged by the City are speculative at best. The City estimated these costs at \$130 to \$460 per lot, with two disclaimers: 1. These costs are difficult to estimate because they will depend on the configuration of the distribution system actually installed; and 2. The dollar amounts provided were developed for lots in other subdivisions, not the subdivision at issue.

The Commission finds that very little weight should be given to these cost figures. First, they are extremely inexact for the reasons explained above. Second, the co-op has pledged to remove interim service facilities without charge and to work with the

City to design a distribution system to minimize eventual integration costs. This should substantially reduce integration costs.

Finally, as discussed below, it is not an absolute certainty that integration costs will be incurred. The City could decline to pay the compensation determined in the compensation proceeding, leaving permanent service the responsibility of the co-op. The Commission concludes potential integration costs do not require awarding interim service rights to the City.

#### **B. Additional Capacity/Wholesale Demand Charge**

The City said it was concerned that the cumulative effect of granting the co-op interim service in situations like this one could be to require the co-op to invest in expensive capacity additions and to increase its wholesale demand charge. The co-op said there was no cause for concern, that it had more capacity than was required to serve the subdivision and that adding the subdivision's summer-peaking load would not increase its wholesale demand charge from its winter-peaking wholesale supplier.

The City characterized the additional capacity/wholesale demand charge issues as "concerns." People's responded with verified pleadings and affidavits establishing that, at least for this subdivision, those concerns have no factual basis. The Commission finds that People's can serve this subdivision without incurring significant costs for additional capacity or any significant increase in its wholesale demand charge. The Commission makes no finding on what effect future expansion might have on People's' capacity needs and wholesale demand charge.

#### **C. Non-Standard Materials**

The City claimed it would unduly complicate its utility operations to have part of its system constructed with co-op materials instead of standard City materials. The Commission is not convinced that the use of co-op materials in the subdivision's distribution system would pose significant problems if the City acquired the system. Although some materials used by the co-op are different from those used by the City, co-op materials are readily available and meet all applicable safety and performance standards. The co-op has stated its willingness to assist the City in acquiring materials, if necessary. The City has filed no evidence on the costs of maintaining or replacing co-op supplied materials. The Commission concludes the problems associated with future City use of co-op materials would be minor.

#### **D. Outside Labor**

The City also claimed the co-op's intent to hire outside labor

for part of the work of constructing the South Park Second distribution system would result in unreasonable costs. The Commission finds the co-op's use of outside labor reasonable.

The City has supplied no actual cost comparisons establishing that it could do the work more economically than People's. The co-op has stated, without contradiction, that all construction work except excavation for underground facilities is done by its own personnel, and that this practice is consistent with industry norms. The Commission concludes the co-op's occasional use of contract labor does not pose a serious cost issue.

#### **E. Energy Efficiency**

The City stated it has lower line losses than People's, because it transmits at a higher voltage. The City argued that it should therefore receive preference as the more energy-efficient utility under public policies promoting energy conservation.

The Commission agrees that it is established public policy to promote energy conservation. The Commission's agreement with the City ends there. Conservation considerations have not played a role in interim service determinations in the past; it is not clear that they should in the future. In any case, the Commission need not address that issue today, since the City has not established that it is more energy-efficient than People's. Line losses are just one part, and a small part at that, of a utility's total conservation performance. It is impossible to make any judgment about the relative efficiency of these two utilities on the basis of their line losses.

Furthermore, People's' line losses are within industry norms. If the Commission did believe that serious consideration of the conservation implications of different transmission voltages was in order, an interim service proceeding would not be an appropriate vehicle for such a broad policy inquiry. The Commission concludes the City's higher transmission voltage and lower line losses are not relevant to its interim service application.

#### **F. The City's Commitment to Serve**

The City also maintained that its firm commitment to acquire permanent service rights to this and every other area within its city limits requires granting the City interim service rights. The Commission disagrees.

The firmest intentions can be frustrated by economic realities. The process of determining appropriate compensation for service rights to co-op territory within the Rochester city limits has not yet been completed. In the only part of the compensation proceeding which has been completed, the City sponsored compensation figures dramatically lower than those sponsored by other parties, awarded by the Commission, and upheld by the courts. (The Commission awarded \$148,036; the City claimed no

compensation was due.)

It is not clear, then, that the City will in fact serve all areas within its city limits in the immediate future. The City could decide to defer service territory acquisitions or to adopt a gradual approach to such acquisitions, once the cost is known. In short, the City's ultimate acquisition of service rights to this subdivision is not sufficiently certain or immediate to justify granting the City interim service rights.

#### **G. Alleged Lack of Cooperation by People's**

The City also claimed People's did not comply promptly with requirements in the last three interim service Orders to consult with the City on the design and construction of distribution systems for subdivisions to which it received interim service rights.<sup>2</sup> In those Orders the Commission had relied on such cooperation in deciding the integration costs issue. The City suggested the Commission should rethink the integration costs issue in light of this failure to cooperate.

The co-op responded that the needs of the City had been so obvious in those cases, and the installation options so few, that consultation had seemed superfluous. The co-op pointed out that the City had no problem with the design and construction of the distribution systems actually installed and that no harm had been done.

The Commission finds that the co-op's failure to consult with the City in the cases cited did no harm and was not due to bad faith or recalcitrance. The Commission expects formal consultation in the future, though, however obvious the needs of the City appear to People's. The relationship between these two utilities has been marked by misunderstanding and communication failures. Given this history, it is not reasonable for either utility to act on the basis of unspoken assumptions it assumes the other shares.

#### **H. The City's Request to Design and Construct the Distribution System**

---

<sup>2</sup> In the Matter of the Petition by the City of Rochester to Provide Interim Service to the Diamond Ridge Third Subdivision, Docket No. E-132, 299/SA-91-252, ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS (June 14, 1991); In the Matter of the Petition by the City of Rochester to Provide Interim Service to Various Annexations and Newly Platted Areas Within the City of Rochester, Docket No. E-132, 299/SA-91-251, ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS (June 14, 1991); and In the Matter of the Petition by the City of Rochester to Provide Interim Service to North Park Sixth Subdivision, Docket No. E-132, 299/SA-91-307, ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS AND REQUIRING FILING AND SERVICE OF AFFIDAVIT(S) (June 14, 1991).

As an alternative to interim service rights, the City asked that People's be required to serve the subdivision through distribution facilities designed, constructed, and owned by the City, to simplify eventual integration of the subdivision into the City's distribution system. The Commission rejected this proposal in an earlier case, involving the South Park Subdivision<sup>3</sup>, and does so again for the same reasons.

The proposal has all the disadvantages of granting the City interim service rights, and introduces a new set of problems all its own. It would complicate liability in the event of accidents. It would create multiple opportunities for disputes about the design and construction of the distribution system. It would result in a morass of legal and policy issues, should the City ultimately decline to acquire permanent service rights and demand compensation for the system from People's.

The Commission will therefore not adopt Rochester's proposal that it be allowed to construct the distribution system for this subdivision. The Commission again, however, directs both the City and the co-op to cooperate in designing and constructing the distribution system, to facilitate its possible eventual integration into the City's system.

#### ORDER

1. The City of Rochester's petition for interim service rights to the subdivision at issue is denied.
2. People's Cooperative Power Association and the City of Rochester shall cooperate as much as possible in the design and construction of the distribution system to serve this subdivision, to facilitate its possible integration into the City's system.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)

---

<sup>3</sup> In the Matter of the Petition of the City of Rochester to Provide Interim Service to the Newly Platted Area Known as South Park Subdivision, E-132, 299/SA-90-853, ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS (January 8, 1991).